

REMARKS

The present Amendment is in response to the Examiner's Office Action mailed April 10, 2007. Claims 1 and 14 are amended. Claims 1-20 remain pending.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicants' remarks are presented in the order in which the corresponding issues were raised in the Office Action.

I. General Considerations

Applicants respectfully submit that the remarks herein are not an exhaustive enumeration of the patentable distinctions between any cited references and the invention, example embodiments of which are set forth in the claims of this application. Rather, and in consideration of various factors making enumeration of all the patentable distinctions between the invention and the cited art impractical, as well as the broad discretion Applicants have in terms of identifying and considering the base(s) upon which the claims distinguish over the cited references, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, these remarks are not intended, and should not be construed, to prejudice or foreclose, in this case or any other, Applicants' contemporaneous or future consideration of additional or alternative distinctions between the invention and the cited references and/or the merits of additional or alternative arguments. Therefore, Applicants submit that the remarks made in this or any related case, neither constitute, nor should be construed as, an implicit or explicit surrender or disclaimer of claim scope with respect to the cited, or any other, references.

II. Rejection Under 35 U.S.C. §102(e)

The Examiner rejected claims 1-20 under 35 U.S.C. § 102(e) as being anticipated by *McBride* (United States Publication No. 2003/0151619)¹. Applicants respectfully disagree.

A. Claims 1-5 and 6-13

¹ Because *McBride* is only citable under 35 U.S.C. § 102(e), Applicants do not admit that *McBride* is in fact prior art to the claimed invention but reserve the right to swear behind *McBride* if necessary to remove it as a reference.

Claim 1 recites, at least in part: “processing a data trace captured from the network to determine a network topology; processing the data trace to determine errors in a network conversation.” Claim 6, although of different scope, recites similar language: “processing the data trace to determine a topology of the network; processing the data trace to determine the presence of errors in communications between devices in the network topology.”

According to the Examiner, *McBride* describes these limitations at paragraphs 203 and 204. *See* Office Action, p. 2. Applicants respectfully disagree because no description of “errors,” much less “errors in communications between devices in [a] network topology,” appears in the cited paragraphs. Also lacking from the cited paragraphs is a description of “processing a data trace...to determine a network topology.” *McBride* describes a topology elsewhere (*see, e.g.*, paragraphs 142 and 153), but it is defined by a network analyst, not by processing a data trace: “The MEUI 301 provides a user interface for a network analyst to establish the WAN topology and network characteristics.” *See* paragraph 142.

Therefore, because the Examiner has not shown that *McBride* describes each and every claim limitation, Applicants respectfully request that the rejection of each of claims 1 and 6 under 35 U.S.C. § 102(e) be withdrawn. The rejection of dependent claims 2-5 and 7-13 should also be withdrawn at least because of their dependence from either claim 1 or 6.

B. Claims 14-20

The Examiner alleged that claim 14 does not “teach or define any new limitation above claims 1-5; therefore, [claim 14 is] rejected for similar reasons.” *See* Office Action, p. 4. Applicants respectfully disagree because, unlike any of claims 1-5, claim 14 recites a method comprising, for example: “providing links...operating to display a screen illustrating...the location of [an] error....”

Furthermore, the Examiner vaguely referenced the entirety of Fig. 11 in attempting to establish that *McBride* teaches the links recited in claim 2 and, by implication, in claim 14. *See* Office Action, p. 3 (instructing Applicants to simply “refer to Fig. 11”). However, numerous elements are shown in Fig. 11 and Applicants respectfully decline to guess which one or ones the Examiner considers to be the claimed links. Therefore, should the Examiner continue to maintain this vague allegation, Applicants respectfully request a more specific explanation of how Fig. 11 relates to the claimed links and their associated, claimed characteristic(s). *See* 37 C.F.R. § 1.104(c)(2) (“When a reference is complex or shows or describes inventions other than

that claimed by the applicant, the particular part relied on must be designated as nearly as practicable.”); *See also* MPEP § 706 (“The goal of examination is to clearly articulate any rejection...so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity.”);

In view of the foregoing, the Examiner has not shown that *McBride* describes each and every claim limitation. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 102(e) rejection of claim 14 and of corresponding dependent claims 15-20.

CONCLUSION

In view of the foregoing, Applicants believe the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner’s Amendment, the Examiner is requested to contact the undersigned attorney.

Dated this 10th day of September, 2007.

Respectfully submitted,

/Eric L. Maschoff/Reg. No. 36,596

ERIC L. MASCHOFF
Registration No. 36,596
Attorney for Applicant
Customer No. 022913
Telephone: (801) 533-9800